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Divorce Abroad - Legal Issues

DISCLAIMER: This flyer is for general information purposes. This information is subject to change without notice and should not be construed as legal advice. Please seek qualified legal counsel for specific information about state and foreign law.

WILL MY FOREIGN DIVORCE BE RECOGNIZED IN THE UNITED STATES?

Marriage and divorce generally are considered matters reserved to the states rather than to the federal government. See, *Sosna v. Iowa*, 419 U.S. 393, 404 (1975) and *Armstrong v. Armstrong*, 508 F. 2d 348 (1st Cir. 1974).

There is no treaty in force between the United States and any country that requires the recognition of foreign divorces. However, a divorce decree issued in a foreign country generally is recognized in a state in the United States on the basis of comity (*Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895)), where both parties had notice of the divorce proceeding and an opportunity to be heard within these proceedings. Under the principle of comity, a divorce obtained in a foreign country under the circumstances described above generally will be recognized by states within the United States. States also may consider the jurisdictional basis upon which the foreign decree is founded and may not recognize the foreign divorce if the court is not satisfied that at least one party was domiciled in the country at the time of the divorce. Many state courts which have addressed the question of a foreign divorce where both parties participate in foreign divorce proceedings but neither is domiciled in the foreign country have followed the view that such a divorce is invalid. Questions regarding the validity of foreign divorces in particular U.S. states may be answered by office of the attorney general of the state in question. However, you may also need to retain private counsel.

INTERNATIONAL TREATIES

The United States is not a party to the Hague Convention on the Recognition of Divorces and Legal Separations, done at the Hague, June 1, 1970 (978 U.N.T.S. 399 (1975)). The Convention relates to such recognition but not to any ancillary matters such as findings of fault, orders for maintenance or custody of children. For more information about this Convention, please see http://www.hcch.net/index_en.php?act=conventions.text&cid=80

DOCUMENTS AND AUTHENTICATION

If you anticipate that you will seek recognition of your foreign divorce in the United States or another country, you may need certified, authenticated, and/or translated copies of your foreign marriage certificates and/or divorce decrees. You may also need information on foreign laws concerning divorce, which may be available from the foreign attorney who handled the divorce. These are likely easiest to obtain at the time of the divorce.

Copies of foreign marriage and divorce certificates may be obtained directly from the civil registrar or court in the foreign country where the marriage or divorce occurred. Contact the embassy or consulate of the foreign country in the United States for guidance on how to obtain copies of foreign public documents. Foreign embassies may require written requests in their language. Enclose copies of pertinent documents and any required fees in the form of an international money order.

In some cases, an authenticated copy of a marriage or divorce certificate will be required when you need to use a legal document from one country in another country. An authenticated document is one that a government authority has certified as genuine. In the case of a foreign document, authentication happens either by obtaining an apostille (in countries party to the Hague Legalization Convention) or by having the document authenticated by the local U.S. embassy or consulate. This is not a form a

registration, but simply the placing of the seal of the U.S. embassy or consulate over the seal of the foreign court. See Notarial and Authentication Services of U.S. Consular Officers Abroad for a detailed discussion of the authentication process. For country specific information, see the U.S. Citizens Services section of the relevant U.S. Embassy website.

FEDERAL BENEFITS AND FOREIGN DIVORCES

Divorce impacts eligibility for and distribution of federal benefits. Accordingly, the U.S. Social Security Administration, Veterans Administration, and Internal Revenue Service have made determinations regarding the validity of foreign divorces based on the laws of the state of residence applicable with respect to claims for benefits. For SSA, see <http://www.ssa.gov/>. Generally, federal entities apply the law of the state of residence of the beneficiary in question.

RELEVANT LINKS

- Marriage Abroad
- Enforcement of Judgments
- Authentications
- Child Support
- International Parental Child Abduction
- Judicial Assistance

Department of State, Office of the Legal Adviser for Private International Law (L/PIL) home page

For information on a specific country, please visit our country specific information

RESOURCES

ABA - the Family Law Section of the American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611, (312) 988-5145;

ABA Center on Children and the Law, 740 15th St., N.W., Washington, D.C. 20005, tel: 202-662-1740;

State or local bar association;

American Academy of Matrimonial Lawyers, 150 N. Michigan Avenue, Ste. 2040, Chicago, IL 60601, 312-263-6477;

International Academy of Matrimonial Lawyers, Secretariat, 13 Claybury, Bushey, Herts WD23 5ES, United Kingdom, tel: (011) (44) 0181-950-6452; fax: (011)(44) 0181,950-8895;

International Society of Family Law, Brigham Young University School of Law, 518 JRCB, Provo, UT 84602;
<http://www.isflhome.org/>;

American Society of International Law, 2223 Massachusetts Avenue, N.W., Washington, D.C. 20008, Tel: (202) 939-6000; Fax: (202) 797-7133;

International Bar Association (IBA), 4th Floor, 10 St Bride Street, London, EC4A 4AD, England, Tel: (011) (44) (207) 842-0090 ; Fax: (011) (44) (207) 842-0091;

QUESTIONS

Additional questions may be addressed to the U.S. Department of State, Bureau of Consular Affairs, Office of Overseas Citizens Services; from within the U.S. 1-888-407-4747; from outside the U.S. 1-202-501-4444.